

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखासदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A. No. 244/VIZ/2023
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

Indira Voona Plot No. 24, Sector 12 MVP Colony, Visakhapatnam – 530017 Andhra Pradesh [PAN: AEWPV1518E]	v.	Income Tax Officer – Ward 3(1) Visakhapatnam
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपील सं./I.T.A. No. 268/VIZ/2023
(निर्धारण वर्ष/ Assessment Year: 2015-16)**

Indira Voona Plot No. 24, Sector 12 MVP Colony, Visakhapatnam – 530017 Andhra Pradesh [PAN: AEWPV1518E]	v.	Income Tax Officer – TDS Ward -1 Visakhapatnam
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	09.09.2024
घोषणा की तारीख/Date of Pronouncement	:	25.09.2024

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by same assessee for two different assessment years, therefore, for the sake of convenience, these appeals are clubbed and heard together and are disposed off by this common order. First, we take up the appeal in ITA No. 244/VIZ/2023 for the A.Y. 2017-18.

ITA No. 244/VIZ/2023 (A.Y. 2017-18)

2. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short "Ld.CIT(A)"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1054750445(1) dated 31.07.2023 for the A.Y.2017-18 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 23.12.2019.

3. Brief facts of the case are that, assessee being an individual filed the return of income for the A.Y. 2017-18 on 13.02.2018 admitting the total income of Rs.Nil. Subsequently, the case was selected for complete scrutiny under CASS to verify the issue of cash deposits during the demonetization period. Accordingly, notice under section 143(2) of the Act was issued and served on the assessee. The Ld. Assessing Officer (Ld.AO) has observed that assessee has

deposited following amounts to the respective bank accounts during the demonetization period: -

Account No.	Account Holder Name	Bank Name & Branch	Amount
LBVPM00002312630 (loan account)	Indira Voona (Self)	ICICI Bank, MVP Colony Branch	5,37,500
623901253345	Indira Voona (Self)	ICICI Bank, Dwarakanagar Branch	9,98,500
631601535026	Vaishnavi Rushali Voona (Minor daughter of the assessee)	ICICI Bank, MVP Colony Branch	2,50,000
Total			17,86,000

4. The Ld.AO thereafter required the assessee to furnish the details and explain the sources for cash deposits made by the assessee during the relevant assessment year. Since assessee did not respond, another notice was issued on 12.10.2019. In response to that notice, assessee submitted the information called for by the Ld.AO stating that source for cash deposits during the demonetization period is as follows: -

Sources:

A: Cash withdrawal from A/c. No. 623901253345	(Rs.)
Date	Amount (Rs.)
22.07.2016	1,20,000
28.07.2016	13,80,000
B: Rent for 8 Months @Rs.24,000 P.M from April to November	1,92,000
C: Savings of F.Y. 2015-16	
Rent	2,40,000
Miscellaneous Income	4,80,000
	7,20,000
	24,12,000

5. The Ld.AO considering the explanation by the assessee being not satisfactory treated the cash deposits during the demonetization period aggregating to Rs. 17,86,000/- as unexplained money under section 69A of the Act.

6. On being aggrieved by the order of the Ld.AO, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee made same submissions as was made before Ld.AO. Ld. CIT(A) dismissed the appeal of the assessee stating that no documentary evidences regarding the same has been provided by the assessee.

7. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. The Appeal order passed u/s 250 of the Income Tax Act by the Learned Commissioner of Income Tax, NFAC, Delhi is contrary to the law and facts of the case.

2. The Learned Commissioner of Income Tax, NFAC, Delhi is not justified in dismissing the appeal filed by not taking the submissions filed fully into consideration. Hence the appellant prays for relief.

3. The Assessing Officer has erred in making an addition of Rs.17,86,000/- as unexplained income u/s 69A of the IT Act in the Assessment Order passed u/s 143(3) of the IT Act and the Learned Commissioner of Income tax, NFAC, Delhi is also not justified in confirming the same. The appellant has made cash deposits out of the savings from earlier years cash withdrawals, rental income, other income of earlier years and personal allowance in cash received from appellant's husband. The same has been substantiated with supporting evidences and explanations, which were not considered by the Learned Commissioner of Income Tax, NFAC, Delhi in his order passed u/s 250 of the Income Tax Act. Hence the appellant prays for relief.

4. For these and other grounds that may be urged at the time of appeal hearing, the appellant prays for relief.”

8. The only contention of the assessee is with respect to addition of Rs.17,86,000/- as unexplained money under section 69A of the Act. Ld.Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee made cash withdrawals as stated before revenue authorities on 22.07.2016 and 28.07.2016. Ld.AR further submitted bank statements evidencing the withdrawals are submitted in paper book at page no. 10. Further, he also submitted that assessee is a regular filer of income tax returns disclosing the rental incomes and other incomes. He therefore pleaded that the sources for the cash deposits have been explained before the revenue authorities but they have not considered the same. He pleaded that the addition may be deleted since the assessee has explained the source of cash deposits.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that assessee has not filed any documentary evidences either before the Assessing Officer or before Ld. CIT(A) and therefore the sources were not properly explained by the assessee with documentary evidences. He therefore, pleaded that order of the Ld. CIT(A) be upheld.

10. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has withdrawn Rs.1,20,000/- on 22.07.2016 and Rs.13,80,000/- on 28.07.2016 from the bank account Number 623901253345 maintained with ICICI Bank. The Ld. AR demonstrated the withdrawals by filing the bank statements which is available in paper book at page no. 10. On perusal

of the bank statements, it is noticed that the assessee has withdrawn cash after redeeming mutual fund investments. However, we are not able to accept the cash balances available with the assessee on the date of deposits arising out of the rental income or any other past savings in the absence of any documentary evidences provided for the same, even before us. Further we also notice from the Income Tax Returns submitted by the assessee, rental income is being adjusted against the interest payment on the housing loans. We are therefore of the considered view that assessee has properly explained the sources of cash with respect to the withdrawals made by the assessee during July 2016 aggregating to Rs. 15,00,000/- and hence we consider amount of Rs.15,00,000/- as properly explained by the assessee. We therefore direct the Assessing Officer to allow amount of Rs. 15,00,000/- as properly explained by the assessee.

11. In the result, appeal of the assessee is partly allowed.

ITA No. 268/VIZ/2023 (A.Y. 2015-16)

12. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1055130429(1) dated 14.08.2023 for the A.Y.2015-16 arising out of order passed under section 200A(1) r.w.s. 194-IA of the Income Tax Act, 1961 (in short ‘Act’) dated 13.09.2021.

13. Brief facts of the case are that the assessee being an individual purchased an immovable property of vacant site at Door No. 2-28-14, MVP colony, Visakhapatnam from three joint co-owners namely Smt. Bikkina Satyavati, Sri Bikkina Ravi Prasad and Sri Bikkina Srinivas. The assessee has paid a total consideration of Rs. 99,00,000/- on various occasions as mentioned in the sale deed. Assessing Officer noticed that assessee has failed to deduct Tax at source as per provisions of section 194-IA of the Act at 1%, therefore, Assessing Officer invoked provisions of section 201 of the Act treating assessee as “assessee in default” as per sub-section (1) of section 201 of the Act and served a notice on 19.08.2021 calling for information from the assessee. In response, assessee submitted vide letter dated 08.09.2021 that there are three co-owners and amount paid was Rs. 33,00,000/- for each co-owner and therefore provisions of section 194-IA is not applicable. The Assessing Officer considering the explanation of the assessee as erroneous and contravention of provisions of section 194-IA of the Act treated assessee as “assessee in default” and raised demand amounting to Rs. 1,79,340/- including interest on TDS under section 201(1) and 201(1A) of the Act.

14. Aggrieved by the order of the Assessing Officer, assessee filed an appeal before the Ld. CIT(A). Similar submissions were made before Ld. CIT(A) by the assessee as was made before Assessing Officer. Ld. CIT(A) by relying on various judicial pronouncements dismissed the appeal of the assessee.

15. Aggrieved by the order of the Ld. CIT(A), assessee in in appeal before us by raising following grounds of appeal: -

“1. The Appeal order passed u/s 250 of the Income Tax Act dated 14/08/2023 by the Learned Commissioner of Income Tax, NFAC, Delhi is contrary to the law and facts of the case.

2. The Learned Commissioner of Income Tax, NFAC, Delhi is not justified in dismissing the appeal filed by not taking the submissions filed fully into consideration. Hence the appellant prays for relief.

3. The Honourable Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in not considering the claim of the appellant that since the consideration paid to each transferor is less than Rs. 50 Lakhs, the appellant is not liable to deduct TDS u/s 194 IA of the Income tax Act and hence not an 'assessee in default' u/s 201(1) of the Income Tax Act. The appellant prays for relief of the same.

4. The Commissioner of Income tax (Appeals), NFAC, Delhi is not justified in treating the appellant as assessee in default and raising tax demand of Rs.1,79,340/- . The appellant prays for relief of the same.

5. For these and other grounds that may be urged at the time of appeal hearing, the appellant prays for relief.”

16. Ground Nos. 1 & 5 are general in nature and needs no adjudication.

17. Ground Nos. 2,3 & 4 relates to the demand of Rs.1,79,340/- made by the Assessing Officer treating the assessee as “assessee in default”. In this connection, Ld. Authorised Representative [hereinafter “Ld.AR”] reiterated the submissions made before revenue authorities stating that there are three joint owners as evidenced by the sale deed. He also referred to section 194-IA of the Act stating that amount paid to transferor it should exceed Rs. 50 lakhs. But in the instant case there are three transferors where the consideration paid to each transferor does not exceed Rs. 50 lakhs. He therefore pleaded that the provisions

of section 194-IA is not applicable and the demand raised by the revenue authorities shall be deleted.

18. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] heavily relied on the orders of the revenue authorities.

19. We have heard both the sides. It is an undisputed fact that the assessee has purchased property by paying the purchase consideration of Rs. 99 Lakhs which is evidenced by the sale deed submitted by the Ld.AR before us. The issue before us is with respect to the applicability of Section 194-IA in the case of joint co-owners for the property. In this connection we extract section 194-IA of the Act for reference: -

*“194-IA. (1) Any person, **being a transferee, responsible for paying** (other than the person referred to in section 194LA) **to a resident transferor any sum** by way of **consideration for transfer of any immovable property** (other than agricultural land), **shall, at the time of credit of such sum to the account of the transferor** or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.*

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.— For the purposes of this section,—

(a) “agricultural land” means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) “immovable property” means any land (other than agricultural land) or any building or part of a building.

20. From the plain reading of the section, we noticed that “transferee” responsible for paying to a resident “transferor” any sum by way of consideration for transfer of any immovable property is subject to deduct TDS @1% at the time of credit of such sum to the account of the transferor. In the instant case, it is evidenced by the sale deed submitted before us that there are three transferors holding equal shares in the property. Accordingly, the sale consideration of Rs.99 Lakhs is being shared by the three transferors at Rs. 33 Lakhs each. The revenue is not in dispute with respect to consideration of Rs.99 lakhs. In view of above facts and circumstances, in our considered opinion since there are three joint co-owners the provisions of section 194-IA shall not be apply where the consideration for each co-owner is below the specified limit of Rs. 50 Lakhs and hence demand raised by the revenue becomes unsustainable. We are therefore allowing the grounds of appeal raised by the assessee.

21. In the result, appeal of the assessee is allowed.

22. To sum-up, appeals are adjudicated as follows: -

Sl.No.	ITA No. & A.Y.	Result
1.	ITA No. 244/VIZ/2023 (A.Y. 2017-18)	Partly allowed
2.	ITA No. 268/VIZ/2023 (A.Y. 2015-16)	Allowed

Order pronounced in the open court on 25th September, 2024.

Sd/-

(दुव्वूरु आरएल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :.25.09.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Indira Voona**
Plot No. 24, Sector 12
MVP Colony, Visakhapatnam – 530017
Andhra Pradesh
2. राजस्व / The Revenue :
 - 1) **Income Tax Officer – Ward 3(1)**
Visakhapatnam
 - 2) **Income Tax Officer – TDS Ward -1**
Visakhapatnam
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam